



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/976,040 | 10/15/2001 | Henry C. Lee | 017750-418 | 1549 |

7590

09/12/2006

Patrick C. Keane
BURNS, DOANE, SWECKER & MATHIS, L.L.P.
P.O. Box 1404
Alexandria, VA 22313-1404

EXAMINER

DANG, DUY M

ART UNIT

PAPER NUMBER

2624

DATE MAILED: 09/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,040

Applicant(s)

LEE, HENRY C.

Examiner

Duy M. Dang

Art Unit

2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 16-21 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4 is/are rejected.
- 7) ☐ Claim(s) 2-3, 5-15, and 22 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION***Election/Restrictions***

1. Applicant's election with traverse of Invention of Group I, Claims 1-15 and 22 in the reply filed on November 04, 2005 is acknowledged. The traversal is on the ground(s) that is set forth in page 1 last paragraph to page 2 first paragraph. This is not found persuasive because the restriction was based on the their different classification which require a different field of search. For example, the field of search for Invention of Group I, class 382 subclass 173 is to search class 382 and subclasses 164 and 171 whereas the field of search for Invention of Group II, class 382 subclass 284 does not require to search class 382 subclass 164, 171 or 173 according to Manual of Classification. Therefore, search for both Inventions of Group I-II are not the same. Because of the different search requirement for each Invention, different examination would be required for each Invention. Therefore, it would create a serious burden to examine the application. That is a burden on the Examiner. Furthermore, both Inventions of Groups I-II are distinct from each other because the utility such as image segmentation in Invention of Group I is not required in the Invention of Group II. Also, the utility such as labeling and combining in Invention of Group II is not required in the Invention of I. One Invention is not deemed obvious over the other Invention. Generally speaking, one invention is entitled per one application.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 16-21 and 23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Invention of Group II, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on November 04, 2005. See 37 CFR 1.142(b) and MPEP § 821.03.

Art Unit: 2624

3. This application contains claims 16-21 and 23 drawn to an invention nonelected with traverse filed on November 04, 2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144). See MPEP § 821.01.

Response to Arguments

4. Applicant's arguments filed on June 23, 2006 have been fully considered but they are not persuasive.

It is noted that Applicant's argument with regard to the rejection of claims 1 and 4 is based on the ground that of "Hamza publication fails to relate the probability of an object being detected in a window to the overlapping manner in which the windows are positioned." (see last line of page 2 to first four lines of page 3). In response to Applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant is reminded that the examiner is entitled to give the broadest reasonable interpretation to the language of the claims. The examiner is not limited to applicant's definition which is not specifically set forth in the claims. See *In re Tanaka et al.*, 193 USPQ, (CCPA) 1977; *Behr v. Talbott*, 27 USPQ 1404 (BPAI expanded panel on recon 1992); *In re Zletz*, 13 USPQ2d 1320 (CAFC 1989).

In this case, Hamza does teach the claimed invention as recited in claims 1 and 4. For example, Hamza teaches: receiving image data (image capture device 12 of figure 2);

Art Unit: 2624

segmenting the image data into multiple windows (i.e., “each capture of the monitored area is divided up into portions or segments. These portions or segments are referred to as mask windows” disclosed in paragraph [0018] in column 2); determining a likelihood that each window contains the object and probability rank ordering the multiple windows based on the step of determining (i.e., “detect objects smaller than the mask window” disclosed in column 2 paragraph [0018] lines 7-8. Also refer to paragraphs [0024] to [0040] in column 3. Specifically, the “an object is detected when the difference in expected value is less than some threshold T” disclosed in paragraphs [0038] to [0040] corresponds to the so called “determining a likelihood that each window contains the object.” Furthermore, it is noted that the value of the threshold T is within the range (rank) from zero (0) to gamma sub ref show in paragraph [0040] refers to claimed “probability rank ordering because: most likelihood window which contains object to be detected has a difference in expect value less than threshold T; and the less likelihood window which contains object to be detected has a difference in expect value more than threshold T); and selecting a predetermined one of the multiple windows as a window wherein the object image is considered to reside (this claimed feature is inherently included in Hamza’s disclosed figure 4 in order to update the reference image. In addition, this claimed feature is also inherently included in Hamza in order to (a)indicate the object is detected in the monitored area as disclosed in paragraph [0018] in column 2, and (b)detect intrusion of people in the field of monitor system as disclosed in column 2 paragraph [0012]).

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 2624

6. Claims 1 and 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Hamza et al. (US Publication No. 2004/0146184. Refer as Hamza).

The advanced statements with regard to claims 1 and 4 as set forth in the preceding paragraph 4 are incorporated herein.

The rejection of claims 1 and 4 under section 35 U.S.C. §102(e) set forth in paragraph 3 of the previous Office action mailed on January 23, 2006 are incorporated herein.

Allowable Subject Matter

7. Claims 2-3, 5-15, and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Art Unit: 2624

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duy M. Dang whose telephone number is 571-272-7389. The examiner can normally be reached on Monday to Friday from 6:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew C. Bella can be reached on 571-272-7778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

dmd
09/06


DUY M. DANG
PRIMARY EXAMINER